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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/686,995	10/16/2003	Navin Geria	6579-408-1	7466
7590 01/24/2006			EXAMINER	
Richard R Michaud The Michaud-Duffy Group 306 Industrial Park Road Suite 206 Middletown, CT 06457			GOLLAMUDI, SHARMILA S	
			ART UNIT	PAPER NUMBER
			1616	
DATE MAILED: 01/24/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/686,995	<b>Applicant(s)</b> GERIA, NAVIN	
	<b>Examiner</b> Sharmila S. Gollamudi	<b>Art Unit</b> 1616	

– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 October 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                                    |

### **DETAILED ACTION**

Claims 1-5 are pending in this application.

#### ***Information Disclosure Statement***

The information disclosure statement (IDS) filed on 11/3/04 has been considered by the examiner.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 1-5 rejected under 35 U.S.C. 103(a) as being unpatentable over Edwards et al (5,523,081) in view of Buerger et al (5985299).**

Edwards teaches a cosmetic composition for shaving of the skin comprising from (a) 40-90% by weight of water; (b) from 4-25% by weight of water-soluble soap; (c) from 0.5-12% by weight of an inert volatile liquid agent, (d) optionally from 0.01-5% by weight of water-soluble gelling agent, and (e) 0.01-15% by weight of a polyorganosiloxane micro-emulsion, the micro-emulsion having an average particle size of less than 0.14 microns. See column 2, lines 1-10. Preferred soaps include the water-soluble stearate and palmitates soaps, such as potassium, ammonium, sodium, and the soluble amine soaps of commercial stearate acid and palmitic acid. See column 2, lines 40-55.

Edwards teaches the inert volatile liquid agent used in the aerosol form of the composition should be suitable to function as an aerosol propellant gas and can be selected from

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a wide variety of the propellants known in the aerosol industry. Suitable inert inorganic gases such carbon dioxide, nitrogen, argon and air. Suitable examples of liquid or liquefied propellant agents include propane, n-butane and iso-butane, or halogenated with fluorine or chlorine, such as monochlorotrifluoromethane, dichlorodifluoromethane, trichloromonofluoromethane, and similar chlorofluorohydrocarbons preferably with from 1 to 3 carbon atoms. See column 3, lines 25-50. Suitable such post-foaming agents for use in the gel compositions are liquids or liquefiable and include saturated aliphatic hydrocarbons having from 4-6 carbon atoms, such as butanes, pentanes and hexanes; partially or wholly halogenated hydrocarbons, such as trichlorotrifluoro ethane. See column 4, lines 5-40 and note examples.

The gelling agents used for post-foaming gel type are water-soluble derivatives of naturally occurring substances such as cellulose, sucrose, and glucose. Preferred gelling agents include the co-polymers of acrylic acid and a polyallyl sucrose, and reaction products of cellulose or glucose with acids or alkaline oxides. See column 3, lines 5-25.

Lastly, Edwards teaches the products may additionally comprise other optional ingredients, such as humectant, skin fresheners, lather stabilizers, coloring materials, dyes, perfumes, **preservatives, bactericides, bacteriostats**, and other components routinely used in such compositions. See column 6, lines 25-32.

Edwards does not specify the use of instant dichlorobenzyl alcohol.

Buerger teaches a pore cleaning formulation. Buerger teaches the formulation includes one or more preservatives to stabilize the composition and/or prevent the growth of bacteria, and/or molds. The reference teaches a variety of suitable materials known in the art of cosmetic formulation may be used in this context, for example, methyl paraben, benzalkonium chloride,

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benzylparaben, **dichlorobenzyl alcohol**, DMDM hydantoin, imidazolidinyl urea, isopropylparaben, quaternium-15, sodium benzoate, etc. The preservative preferably comprises from 0-2% wt of the overall composition on a dry basis, more preferably 0-1% wt, and most preferably around 0.5% wt. See column 6, lines 29-41.

It would have been obvious for one of ordinary skill in the art at the time the invention was made to combine the teachings of Edwards et al and Buerger et al and utilize dichlorobenzyl alcohol as the preservative in Edwards's composition. One would have been motivated to do so since Buerger teaches conventional preservatives known and used in the cosmetic art, such as dichlorobenzyl alcohol, to prevent the growth of bacteria and molds in the composition. Therefore, a skilled artisan would have been motivated to utilize a conventional preservative such as instantly claimed dichlorobenzyl alcohol, in the composition to extend its shelf life. Further, a skilled artisan would have expected similar results since Edwards teaches utilizing routine adjuvants known in the cosmetic art such as preservatives, stabilizers, etc.

**Claims 1-5 rejected under 35 U.S.C. 103(a) as being unpatentable over Edwards et al (5,523,081) in view of Moran et al (5,523,017).**

Edwards teaches a cosmetic composition for shaving of the skin comprising from (a) 40-90% by weight of water; (b) from 4-25% by weight of water-soluble soap; (c) from 0.5-12% by weight of an inert volatile liquid agent, (d) optionally from 0.01-5% by weight of water-soluble gelling agent, and (e) 0.01-15% by weight of a polyorganosiloxane micro-emulsion, the micro-emulsion having an average particle size of less than 0.14 microns. See column 2, lines 1-10. Preferred soaps include the water-soluble stearate and palmitates soaps, such as potassium,

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ammonium, sodium, and the soluble amine soaps of commercial stearate acid and palmitic acid.

See column 2, lines 40-55.

Edwards teaches the inert volatile liquid agent used in the aerosol form of the composition should be suitable to function as an aerosol propellant gas and can be selected from a wide variety of the propellants known in the aerosol industry. Suitable inert inorganic gases such carbon dioxide, nitrogen, argon and air. Suitable examples of liquid or liquefied propellant agents include propane, n-butane and iso-butane, or halogenated with fluorine or chlorine, such as monochlorotrifluoromethane, dichlorodifluoromethane, trichloromonofluoromethane, and similar chlorofluorohydrocarbons preferably with from 1 to 3 carbon atoms. See column 3, lines 25-50. Suitable such post-foaming agents for use in the gel compositions are liquids or liquefiable and include saturated aliphatic hydrocarbons having from 4-6 carbon atoms, such as butanes, pentanes and hexanes; partially or wholly halogenated hydrocarbons, such as trichlorotrifluoro ethane. See column 4, lines 5-40.

The gelling agents used for post-foaming gel type are water-soluble derivatives of naturally occurring substances such as cellulose, sucrose, and glucose. Preferred gelling agents include the co-polymers of acrylic acid and a polyallyl sucrose, and reaction products of cellulose or glucose with acids or alkaline oxides. See column 3, lines 5-25.

Lastly, Edwards teaches the products may additionally comprise other optional ingredients, such as humectant, skin fresheners, lather stabilizers, coloring materials, dyes, perfumes, preservatives, bactericides, bacteriostats, and other components routinely used in such compositions. See column 6, lines 25-32.

Edwards does not specify the use of instant dichlorobenzyl alcohol.

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Moran et al teach solid cleansing bars including shaving bars. See examples 5-6. The composition comprises detergents such as lauryl sulfate. See column 2, lines 10-11. Moran teaches the use of adding to the composition colors, fragrances, medicaments, astringents, deodorants, antidandruff substances, and antibacterials agents in the amount of 0.5-5% and specifically dichlorobenzyl alcohol in the amount of 0.2-0.5%. See column 6, line 55 to column 7, line 3.

It would have been obvious for one of ordinary skill in the art at the time the invention was made to combine the teachings of Edwards et al and Moran et al and utilize dichlorobenzyl alcohol as the bactericide in Edwards's composition. One would have been motivated to do so since Moran teaches the use of antibacterials agents such as instant dichlorobenzyl alcohol, in cleansing composition such as shaving preparations. Therefore, a skilled artisan would have been motivated to utilize a instantly claimed dichlorobenzyl alcohol in the composition for its antibacterial properties. Further, a skilled artisan would have expected similar results since Edwards teaches additionally utilizing of routine adjuvants known in the cosmetic art such as bactericides.

**Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over WO 96/06153 to Moldovanyi in view of Schraufstatter (2,945,782).**

Moldovanyi teaches surface-active formulations for the disinfection and cleansing of skin and hands. The formulation comprises (a) 0.01-5% of a microbiocidal active agent of Formulas 1-7; (b) 0.1-25% of one or more hydrotrophic agent; (c) 0-10% surface active agents or a soap; (d) 0-8% of a fatty acid salt; (e) 0-50% dihydric alcohol; (f) 0-70% of a monohydric alcohol; and water to balance. See abstract. The illustrative microbiocidal active agents of formula 3 are

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benzyl alcohol; 2,4- or 3,5-, or 2,6-dichlorobenzyl alcohol. See page 3. The surface-active agent may be an anionic such as sulfates, alkylamide sulfates, alkylamide ether sulfates, alkylaryl polyether sulfonates, alkylaryl sulfonates, alkane sulfonates, etc. See page 7-8. Alkali metal salts of lauryl ether sulfate are preferred. See page 9. The monohydric alcohol taught is ethanol, propanol, and isopropanol (inert volatile liquid). See page 10.

Specifically example 11 teaches 1 part 2,4-dichlorobenzyl alcohol; 4 parts sodium lauryl sulfate (water-soluble soap); 5 parts sodium cumene sulfonate; 1 part propylene glycol; 8 parts citric acid monohydrate; and water to balance (81%). Example 7 uses 12% ethanol with 1% of the microbicidal agent of formula 6.

Although Moldovany teaches the optional use of a monohydric alcohol in the amount of 0-50% which encompasses ethanol and isopropanol, the reference lacks the specific teaching of the inert volatile liquid (ethanol or isopropanol) with the instantly claimed microbicidal agent (dichlorobenzyl alcohol).

Schraufstatter teaches disinfectant composition comprising dichlorobenzyl alcohol. Schraufstatter teaches the use of alkylsulfates or sulfonates, aralkylsulfonates, alkylarylsulfonate and monovalent or polyvalent alcohols such as ethanol, isopropanol, glycols, and polyglycol are dissolving agents for halogen containing arylalkanols. See column 1, lines 38-45.

It would have been obvious for one of ordinary skill in the art at the time the invention was made to combine the teaching of Moldovanyi's and Schraufstatter and utilize ethanol or isopropanol, both of which are inert volatile liquids, as the solvent in example 11. One would have been motivated to do so since Schraufstatter teaches that ethanol, isopropanol, or glycols may be used as the solvent for dissolving halogen-containing arylalkanols (dichlorobenzyl



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alcohol). Thus, one would have been motivated to substitute the propylene glycol with as ethanol/isopropanol as the solvent of choice since Schraufstatter teaches that all three are used as solvents for dichlorobenzyl alcohol, i.e. all are functional equivalents in acting as dissolving agents for dichlorobenzyl alcohol. Therefore, a skilled artisan would have expected similar results by utilizing ethanol/isopropanol since the prior art establishes that propylene glycol the solvent used in Moldovanyi and ethanol/isopropanol are functional equivalents.

Note that “shaving” has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

### ***Conclusion***

All the claims are rejected at this time.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sharmila S. Gollamudi whose telephone number is 571-272-0614. The examiner can normally be reached on M-F (8:00-5:30), alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Kunz can be reached on 571-272-0887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Sharmila S. Gollamudi  
Examiner  
Art Unit 1616

